IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

JOSE AND MARY GRACIA, HUSBAND AND WIFE, INDIVIDUALLY AND AS ADMINISTRATORS OF THE ESTATE OF JSOE [sic] ANGEL GRACIA, III, A DECEASED CHILD, AND AS NEXT FRIENDS OF MONICA GRACIA, ADAM GRACIA, AND CHRISTOPHER GRACIA, MINOR CHILDREN	§	CIVIL ACTION NO. B-91-146
VS	§	(Filed Mar. 21, 1994)
BROWNSVILLE HOUSING AUTHORITY, RAUL TREVINO, INDIVIDUALLY AND AS EXECUTIVE DIRECTOR OF THE BROWNSVILLE HOUSING AUTHORITY, GENOVEVO RUBALCABA, INDIVIDUALLY AND AS SUPERVISOR OF MAINTENANCE OF THE BROWNSVILLE HOUSING AUTHORITY	§	

PLAINTIFFS' STATE CLAIMS

(Question No. 1 & 2)

In this action the Plaintiffs claim that as guests of a relative who resided at the Brownsville Housing Authority's property, Jose Angel Gracia, III was killed

and his sister Monica Gracia injured when a tree located on the premises of the Housing Authority collapsed and struck the children. The Plaintiffs claim that the Defendants failed to use ordinary care in maintaining the premises, failed to use ordinary care to inspect the premises, and that this failure constituted negligence and was a proximate cause of the injuries in question.

The defendants deny that any of their actions during the time in question constituted negligence and that their actions were a proximate cause of the injuries in question. You are instructed that:

"ORDINARY CARE" means that degree of care which would be used by a person of ordinary prudence under the same or similar circumstances.

"NEGLIGENCE" means failure to use ordinary care; that is to say failure to do that which a person of ordinary prudence would have done under the same or similar circumstances, or doing that which a person of ordinary prudence would not have done under the same or similar circumstances.

"PROXIMATE CAUSE" means that cause which, in a natural and continuous sequence, produces an event, and without which cause such event would not have occurred; and in order to be a proximate cause, the act or omission complained of must be such that a person using ordinary care would have foreseen that the event, or some similar event, might reasonably result therefrom. There may be more than one proximate cause.

PLAINTIFFS' FEDERAL CLAIMS

The Plaintiffs also claim that their rights under Federal law were violated because the Defendant's failed to train and supervise Housing Authority personnel to inspect and maintain the premises pursuant to federal regulations. The Plaintiffs further contend that the Housing Authority had official policies requiring the premises be inspected yearly and maintained in a safe condition and that violation of this policy is a violation of federal constitutional and statutory rights.

The defendants deny that any of their actions during the time in question violated constitutional and statutory rights of the plaintiffs.

Section 1983 of Title 42 of the United States Code provides that any person may seek redress in this Court by way of damages against any person who under color of state law or custom, intentionally deprives that citizen of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States.

The constitutional and statutory rights that the Plaintiffs claim the defendants violated are:

1. The right not to be deprived of life or liberty without due process of law;

2. The right not to be denied the federal statutory rights secured under the annual contributions contract, the dwelling lease, under specific provisions of state and city law as well as rules and regulations of the Housing Authority of Brownsville that have been incorporated by Federal law.

In order to prove their claims under this statute, the plaintiffs must establish by a preponderance of the evidence each of the following elements:

1. That the Defendants intentionally or with conscious indifference committed acts that violated one or more of the Plaintiff's federal constitutional and/or statutory rights;

2. That in doing so the Defendants acted "under the color of state law"; and

3. That the Defendants acts were the legal cause of the Plaintiff's damages.

In this case you are instructed that the Defendants were acting under color of state law at the time of the acts complained of.

Failure to Inspect/Failure to Train

(Question 3 & 4)

The Defendants may be liable for deprivations of Monica Gracia and Jose Angel Gracia III's constitutional and statutory rights for its failure to inspect and safely maintain its premises. You are instructed that the Defendants are required to follow federal and local laws incorporated by federal law regarding the maintenance and inspection of the housing authority premises. The failure to inspect and safely maintain the housing authority premises may serve as a basis for liability only where the failure in a relevant respect amounts to conscious indifference to the rights of those persons using the premises. The identified deficiency in maintenance and/or inspection must be closely related to the ultimate injury.

The Defendants may be liable for deprivation of Plaintiffs' constitutional or statutory rights for its failure to adequately train and supervise its employees. Such failure to train and supervise can result in liability for the housing authority even if the housing authority's underlying policy, for which training or supervision is required, is constitutional or complies with federal regulations. In other words, if a valid policy is ignored or violated by a housing authority employee, the housing authority is liable if the employee had not been adequately trained or supervised and the constitutional or statutory deprivations have been caused by the failure to train. Provided that the failure to train was a custom or policy, and the failure to train in relevant respect amounts to a conscious indifference to the constitutional or statutory rights of persons with whom the employees came in contact.

Custom or Policy

(Question No. 5 & 6)

Plaintiffs claim that the Brownsville Housing Authority is liable for alleged constitutional and statutory deprivations. The Brownsville Housing Authority is liable for the deprivation of a constitutional or statutory right if the deprivation was pursuant to governmental policy, custom, ordinance, regulation or decision. Therefore, if you find that Monica Gracia and Jose Angel Gracia were injured as a proximate or legal result of the Brownsville Housing Authority's policy, custom, ordinance, regulation or decision, whether made by its lawmakers or by those officials whose edicts or acts may be fairly said to

represent official policy, the authority itself will be responsible.

A custom of the housing authority or governmental entity is established when the officials or employees of the housing authority engage in persistent, wide spread practice that is so common and well settled that it fairly represents a policy.

The governing body of the housing authority must have actual or constructive knowledge of the custom. Constructive knowledge of the custom occurs when a governing body has both the power and intention, at a given time, to exercise dominion and control over the particular practice or custom, whether they actually exercise that dominion and control or not.

DEFENDANTS' STATE CLAIMS

(Questions 7 & 8)

The Defendants contend that Jose and Mary Gracia Jr. were negligent, and that such negligence was a proximate cause of the injuries in question.

You are instructed to refer to the definitions of ordinary care, negligence, and proximate cause you were favored with under the title "Plaintiffs' State Claims".

You are further instructed that the burden of proof for questions 7 & 8, and only 7 & 8, rests upon the Defendants.

DAMAGES

(Questions 10 A, B, C, D, E)

Disfigurement/loss of capacity for enjoyment of life

You may award damages for any bodily injury that the Plaintiffs sustained and any pain and suffering, disability, disfigurement, mental anguish and/or loss of capacity for enjoyment of life that the plaintiffs experienced in the past or will experience in the future as a result of the bodily injury. No evidence of the value of intangible things, such as mental or physical pain and suffering, has been or need be introduced. You are not trying to determine value, but an amount that will fairly compensate the Plaintiffs for the damages they have suffered. There is no exact standard for fixing the compensation to be awarded for these elements of damages. Any award that you make should be fair in the light of the evidence.

Compensatory Damages

If you find that the Defendant is liable to the Plaintiff then you must determine an amount that is fair compensation for all of the Plaintiffs' damages. These damages are called compensatory damages. The purpose of compensatory damages is to make the Plaintiffs whole – that is, to compensate the Plaintiffs for the damage that Plaintiffs have suffered. Compensatory damages are not limited to expenses that the Plaintiffs may have incurred because of their injuries.

You may award compensatory damages only for injuries that the Plaintiffs prove were proximately caused by the Defendants' allegedly wrongful conduct. The damages that you award must be fair compensation for all of the Plaintiffs' damages, no more and no less. Damages are not allowed as a punishment and cannot be imposed or increased to penalize the Defendants. You should not award compensatory damages for speculative injuries, but only for those injuries which the Plaintiffs have actually suffered or that the Plaintiffs are reasonably likely to suffer in the future.

If you decide to award compensatory damages, you should be guided by dispassionate common sense. Computing damages may be difficult, but you must not let that difficulty lead you to engage in arbitrary guesswork. On the other hand, the law does not require that the Plaintiffs prove the amount of their losses with mathematical precision, but only with as much definiteness and accuracy as the circumstances permit.

You must use sound discretion in fixing an award of damages, drawing reasonable inferences where you find them appropriate from the facts and circumstances in evidence.

Calculation of Past and Future Damages

A. Damages Accrued.

If you find for the Plaintiffs, they are entitled to recover an amount that will fairly compensate them for any damages they have suffered to date.

B. Calculation of Future Damages.

If you find that the Plaintiffs are reasonably certain to suffer damages in the future from these injuries, then you should award them the amount you believe would fairly compensate them for such future damages. In calculating future damages, you should consider the standard table of mortality as compiled by the United States Bureau of the Census, or other recognized mortality table.

C. Reduction of future Damages to Present Value.

An award of future damages necessarily requires that payment be made now for a loss that the Plaintiffs will not actually suffer until some future date. If you should find that the Plaintiffs are entitled to future damages, including future earnings, then you must determine the present worth in dollars of such future damages.

If you award damages for loss of future earnings, you must consider two particular factors.

1. You should reduce any award by the amount of the expenses that the Plaintiffs would have incurred in making those earnings.

2. If you make an award for future loss of earnings, you must reduce it to present value by considering the interest that the Plaintiffs could earn on the amount of the award if he made a relatively risk-free investment. The reason why you must make this reduction is because an award of an amount representing future loss of earnings is more valuable to the Plaintiffs if they receive them today than if they received it in the future, when they would otherwise have earned it. It is more valuable because the Plaintiffs can earn interest on it for the period of time between the date of the money. Thus you should adjust the amount of any award for future loss of earnings

by the amount of interest that the Plaintiffs can earn on that amount in the future.

If you should make any award for future medical expenses, you should adjust or discount the award to present value in the same manner as with loss of future earnings.

However, you must not make any adjustment to present value for any damages you may award for future pain and suffering or future mental anguish.

QUESTION NO. 1

Do you find from a preponderance of the evidence that any of the named Defendants were negligent?

You are instructed that any of the individuals named were negligent if:

A). The tree posed an unreasonable risk of harm; and

B). The Defendants knew of the danger; and

C). The Defendant failed to exercise ordinary care to eliminate the danger.

Answer "Yes" or "No".

ANSWER: NO

If you have answered QUESTION NO. 1 "Yes", then answer QUESTION NO. 2; otherwise, do not answer any further questions.

QUESTION NO. 2

Do you find from a preponderance of the evidence that the negligence of the Defendants proximately caused the injuries in question?

Answer "Yes" or "No".

ANSWER: _____

If you have answered QUESTION NO. 2 "Yes", then answer QUESTION NO. 3; otherwise, do not answer any further questions.

QUESTION 10E

What sum of money, if paid now in cash, would fairly and reasonably compensate Adam Gracia and/or Christopher Gracia for mental anguish from witnessing the occurrence in question and the subsequent injuries to Monica Gracia and the death of Jose angel Gracia, III and for the loss of consortium with Monica Gracia.

The loss of consortium means:

Any loss of the right to the affection, solace, comfort, companionship, society, emotional support, love, felicity between a child and a sibling sustained in the past and which the sibling will sustain in the future.

Answer in dollars and cents for damages, if any, that were sustained in the past and that in reasonable probability will be sustained in the future.

Adam Gracia Answer: _____

Christopher Gracia Answer: _____

This Is A True Verdict.

Date 3-21-94 /s/ Dan McCruz
Foreperson